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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re S.V., a Person Coming Under  
the Juvenile Court Law.

2d Juv. No. B275257  
(Super. Ct. No. 15JD-00162)  
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY  
DEPARTMENT OF SOCIAL  
SERVICES,

Plaintiff and Respondent,

v.

J.P.,

Defendant and Appellant.

J.P. (Father) appeals orders of the juvenile court. He claims the court erred by denying his Welfare and Institutions Code section 388 motion and by not vacating its prior order which denied reunification services with his son S.V., a minor coming

under the juvenile court law.<sup>1</sup> (§ 300, subd. (b).) We conclude, among other things, that the court did not abuse its discretion. We affirm.

### FACTS

On May 20, 2015, the San Luis Obispo County Department of Social Services (DSS) filed a juvenile dependency petition alleging that J.V. (Mother) tested positive for “barbiturates, tri-cyclics, methamphetamine and THC at the time” she gave birth to baby S.V. The child was placed “into protective custody” because of “signs of infant withdrawal,” feeding problems, and “a rise in his Neonatal Abstinence scores” due to Mother’s “illicit substance abuse.” DSS said the child is “in need of the protection of the Juvenile Court.” It said it had “no contact information” for Father and “cannot assess whether he is in a position to take care of the child or if he believes he is the father of the child.”

In June 2015, DSS gave notice that it would bypass Mother for reunification services because of her extensive drug abuse history. (§ 361.5, subd. (b)(13).)

In the June 23, 2015, jurisdiction/disposition report, DSS said Father was not entitled to reunification services because “he is an alleged father only at this point, and would not meet criteria for provision of services.” It said that, under section 361.5, subdivision (b)(1), “[r]eunification services need not be provided when ‘[t]he parent’s . . . whereabouts are unknown.’” DSS said it was unable to contact Father.

Mother did not appear for the August 5, 2015, contested hearing. The juvenile court denied reunification

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

services for Father and Mother. It found “services need not be provided to [Father] as he remains an alleged father, whereabouts unknown.” The court ruled the child is “adjudged a dependent” and it set a service review hearing for October 28, 2015, and a section 366.26 hearing for December 2, 2015.

On September 16, 2015, a DSS social worker told Father to contact her DSS supervisor “so that he could be a part of his son’s life.” Father did not contact the supervisor.

On October 29, 2015, Father talked to a DSS social worker and provided his address. DSS requested a 90-day continuance of the section 366.22 hearing to obtain a determination on whether Father was the biological father of the child.

On January 14, 2016, Father filed a section 388 petition claiming, among other things, that he should have “full legal and physical custody” of the child. He said he was the biological father and the court should find him to be the presumed father. He works full time and has custody of four other children.

DSS filed a report stating that the child had delayed development and learning disabilities because of his “in-utero” exposure to the drugs that Mother used. It said Father was not able to provide for the child’s special needs.

In its May 3, 2016, addendum report, DSS recommended that Father’s and Mother’s parental rights be terminated and that the child be adopted.

At the May 13, 2016, section 366.26 hearing, the court ruled that DNA testing showed that Father “is confirmed as the biological father.” The court also heard testimony on Father’s section 388 motion.

Father testified he lives in Idaho and he first learned about the dependency case a month before his December 2, 2015, court appearance in this case. He knew Mother was pregnant with S.V. in Idaho. Four or five months into her pregnancy, she was using drugs and they “split up.” He tried to “stay in contact with her,” but “she just kind of disappeared.” On cross-examination, Father said he bought Mother a “bus ticket” and kicked her out of the home when she was pregnant with his child because she drank and was taking pills.

The juvenile court denied the section 388 motion. It found: 1) Father was “not entitled to services,” 2) he was not a presumed father, 3) he sent Mother and his unborn child “out of state, further away from his care and . . . his ability to provide protection,” 4) “that action . . . doesn’t show the action of a parent,” and 5) Father was a “frustrated man . . . watching harm being done to a potential child and not doing anything to prevent that.”

The juvenile court said once the child was born Father “didn’t avail [himself] of the opportunity to contact law enforcement or social services.” He did not take steps to be identified as a “parent early on.” The court said it had to consider Father’s ability “to assume full responsibility.” It referred to evidence showing that Father had been incarcerated and was “unavailable to [his] children for an extended period of time.” It found the evidence showed that he had a “lack of understanding about [his] relationships with women” he lived with and their “drugs” and “physical violence.” It considered the child’s “best interests” and his special needs. It said the child was in “a specialized placement because of those needs.” It found the child was adoptable. It did not make a ruling on the DSS

recommendation that parental rights be terminated. It reserved that issue for a future hearing. It granted Father visitation with the child.

### DISCUSSION

Father contends the juvenile court erred by denying his section 388 motion to modify the prior court orders and by not granting reunification services. We disagree.

“The juvenile court may modify an order if a parent shows . . . changed circumstance or new evidence and that modification would promote the child’s best interests.” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685.) “Whether a previously made order should be modified rests within the dependency court’s discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established.” (*Ibid.*) “The denial of a section 388 motion rarely merits reversal as an abuse of discretion.” (*Id.* at pps. 685-686.)

The juvenile court found Father was the biological father of S.V. “Upon a finding and declaration of paternity by the juvenile court . . . , [it] may order services for the child and the biological father, *if the court determines that the services will benefit the child.*” (§ 361.5, subd. (a), italics added.)

Father contends he presented evidence showing that he was more than a biological father, he was a “quasi-presumed” father. He claims the evidence shows changed circumstances to support his section 388 motion.

DSS contends the evidence supports the juvenile court’s findings against Father. It claims the court properly denied the section 388 modification because the court could reasonably infer a change was not in the best interests of the child. We agree.

The juvenile court initially denied reunification services for Father on August 5, 2015. But he did not file his section 388 petition until January 14, 2016. The hearing on the section 388 petition took place in May 2016 at the time of the section 366.26 hearing. But that was at a late part of the dependency process. At this stage, a major concern is evaluating the child's progress and looking for stability and permanency for him. (§ 366.26, subd. (b); *In re Amber M.*, *supra*, 103 Cal.App.4th at p. 685.)

DSS opposed Father's section 388 motion for additional reasons. It said that Father came to court with his girlfriend who had recently tested positive for methamphetamine, amphetamine and THC. Father allowed Mother who was pregnant with S.V. to stay with him "until he tired of watching her drink during her pregnancy." He then "bought her" a "bus ticket" and sent her "back to San Luis Obispo County." He was "not around" when S.V. was born.

DSS said Father "did not look for [Mother], did not try to retrieve his son," and did not take the "steps necessary to be deemed a presumed father." In September 2015, a DSS social worker told Father to contact a DSS supervisor so that he could be "part of his son's life." But Father did not contact the supervisor.

Father's testimony differed. Father claimed he acted promptly and reasonably under the circumstances. But the juvenile court alone decides the credibility of the witnesses and the weight to be given to the evidence. (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) Here the court's findings show that it found that much of Father's testimony was not credible. The court acted within its discretion by giving greater weight to the

social worker's account and in resolving the evidentiary conflicts against Father. (*Ibid.*) Moreover, on cross-examination, Father admitted that: 1) he knew the baby was due in May 2015, 2) he did not contact DSS "with a concern that there might be a drug-using mother caring for [his] child" at that time, 3) he did not file an "action in the San Luis Obispo County Court to establish a paternal relationship" at that time, and 4) in August 2015 Mother contacted him. Mother told him the condition of the baby.

DSS said Father's "pattern of choosing different women with significant issues over the past several years is prevalent and concerning." It noted, "[Father] has full custody of three children he had with a woman he was in a relationship with over several years. The relationship finally ended when she was imprisoned for stabbing him in the back." Mother had "a significant past drug history." DSS said there was a problem about Father "bringing women who have a history of violence and drug issues around his kids." DSS suggested that Father is in denial about this problem. He told DSS his most recent girlfriend "isn't a drug user." But DSS said that "her appearance and positive drug test suggests that she has been a drug user for quite a long time."

The social worker noted that as a result of his "in-utero" exposure to "multiple substances," S.V. has delayed development and will have "learning difficulties throughout his life." DSS said Father's "current living situation" is not "supportive of [the child's] special needs." His three other children share a single bedroom in a small home. He shares custody with another daughter who also stays in that bedroom.

Father works full time, sleeps in the living room, and wants S.V. to stay in that small area.

DSS said the child needs: 1) a “quiet, structured, predictable environment,” 2) four or more medical appointments per month, and 3) the “best of care with the most therapeutic environment that a baby with his level of needs could have.” It attached a report from a mental health therapist who said the child “has benefited greatly from the nurturing care he’s received from his foster family.” But he “may have special needs across the span of life long development.” DSS said Father is not able to provide for the unique special needs of this child.

In its May 3, 2016, addendum report, DSS said the social worker explained to Father that the child’s special needs required a “caregiver with the time and resources to make [the child] a priority.” Father denied that the child had special needs. The trial court could reasonably infer that a parent who expressed such an attitude to a social worker about this issue could not care for a special needs baby. The social worker noted that DSS had “identified a family” who had “raised other children with special needs and they feel completely comfortable initiating and accessing services that are in [S.V.’s] best interest.”

DSS said Father had a problem recognizing the impact of the violence that had occurred in his home. It said he had “a lack of insight or acknowledgment of the dysfunctional or negative dynamic that is present in a relationship with domestic violence or the affect it has on his children, who are also experiencing the same traumatic events that he experienced.”

DSS claims the Father’s criminal history was also a factor the court could properly consider in deciding the best interests of the child. We agree. Father testified that he is

currently on probation. His criminal record included a 2015 Oklahoma felony conviction for “aggravated battery” on a police officer. On cross-examination, he testified he also had a 2009 battery conviction involving an incident in his home. He had a driving-while-intoxicated conviction in 2007. He was required to take “drug and alcohol classes for it.” He was “cited for driving without a license” in 2010. Other people had to take care of his children when he was in jail for four months for his felony conviction and for another two-month period.

We have reviewed Father’s remaining contentions and we conclude he has not shown grounds for reversal.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

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Christopher Blake, under appointment by the Court  
of Appeal, for Defendant and Appellant.

Rita L. Neal, County Counsel, Leslie H. Kraut,  
Deputy County Counsel, for Plaintiff and Respondent.